

AF/IFW

Atty Dkt DRA01 P303A

CERTIFICATE OF MAILING

I hereby certify that this paper, together with all enclosures identified herein, are being deposited with the United States Postal Service as first class mail, addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313-1450, on the date indicated below.

Dated

Tania P. Rentz

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 3644
Examiner : Kimberly S. Smith
Applicant : Roger Draft
Appln. No. : 10/785,636
Filing Date : February 24, 2004
Conf. No. : 2405
For : CAGE FOR TRANSPORTING AND STUNNING LIVESTOCK

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

REPLY BRIEF

In this appeal, claims 1, 2, 6, and 8-13 are at issue substantively. Claims 3-5 and 7 have been objected to, and claim 18 has now been allowed. The Examiner has rejected claims 1, 6, and 8-13 under § 102(b) as being anticipated by Ruggieri et al. U.S. Patent No. 4,365, 590; and has rejected claims 1, 2, 6, and 8-13 under § 102(b) as being anticipated by Ziegler U.S. Patent No. 2, 220,436. Each of these references and the arguments made with respect to them by the Examiner in her brief are addressed separately below.

THE RUGGIERI ET AL. REJECTION

While the Applicant agrees with the Examiner that the door 26 of Ruggieri et al. has a defined width, the Applicant does not agree that Fig. 3 of that reference illustrates that the door is completely located within the perimeter of the frame and therefore must inherently include a cavity. Instead, as the Examiner has indicated, the door is flush with the perimeter of the frame—there is no cavity in the frame of the Ruggieri et al. structure to receive the bottom portion of the door 26. Instead, the door abuts partition wall 34. In fact, the Ruggieri et al. specification says

that each door is sized to cover over and seal off of two adjacent shelf compartments 32 from each other. (Col. 9, lines 14-21). The door does not reside within a cavity along the entire length of the door at the bottom of the frame structure.

Claim 1 of the instant application recites: “the cavity in the frame being adapted to receive the bottom portion of the at least one door when the door is in the closed position so that the at least one door will not open unintentionally.” The Ruggieri et al. animal cage rack does not include such a structure. A “cavity” is an unfilled space within a mass, especially a hollowed-out space. This is how one of ordinary skill in the art would define “cavity.” There is nothing in the Ruggieri et al. rack that would be considered a hollowed-out space in which the door sits. Furthermore, there is nothing to keep the door from opening *unintentionally*. Thus, because it is missing an element of claims 1, 6, and 8-13, Ruggieri et al. cannot anticipate those claims.

With respect to claim 6, not only does the Ruggieri et al. reference not include a cavity, which is part of claim 6, but Ruggieri et al. does not have a cradle attached to the frame near the top of the at least one opening and adapted to receive the bottom of the at least one door. The Examiner points out the typographical error at pages 16-17 of Appellant’s Initial Brief, but the fact of the matter remains that the Ruggieri et al. reference does not include a cradle that is adapted to receive the bottom of the door. As the Examiner states, Ruggieri et al. show the door frame resting upon the outer track surface, with the front panel of the door frame projecting from the front of the cage. (See, e.g., Fig. 1 of the Ruggieri et al. reference). Thus, *the bottom of the panel cannot be sitting in a cradle because it is projecting outwardly from the frame* of the Ruggieri et al. animal cage rack. As the Examiner points out, the language of claim 6 of the instant application reads “adapted to receive the bottom of the at least one door,” but there is no structure in the Ruggieri et al. reference that could be considered a cradle that is adapted to receive the bottom of the door. This simply is not part of the Ruggieri et al. cage rack. Thus, the Ruggieri et al. reference does not include this limitation, and cannot be anticipatory of claim 6 of the instant application. The same argument holds true for claim 8 (and its dependents) of the instant application, which includes the same limitation.

Applicant : Roger Draft
Appln. No. : 10/785,636
Page : 3

THE ZIEGLER REJECTION

Claims 1, 2, 6, and 8-13 have been rejected under § 102(b) as being anticipated by the Ziegler reference. Although the Examiner argues that Ziegler discloses a top horizontal rod that rides along a member attached to the frame (as in the claims of the instant application), the Ziegler reference does not include such a structure. The Examiner points to part number 38 as being the “horizontal rod” of the Ziegler adjustable door type partition. However, 38 is defined as a “stub axle” and is not a rod. Furthermore, although part number 24 is a “member” that is attached to the frame, the structure of the rejected claims is not disclosed in the Ziegler reference. The Examiner states that in the Ziegler reference, the stub axle 38 rides along member 24 via wheels 39. While the wheels do ride along member 24, the stub axle 38 does *not* ride along member 24. It is the axle of a wheel and not a horizontal rod which rides along a member attached to the frame in the Ziegler structure. The Ziegler reference does not disclose the claimed structure and therefore cannot be anticipatory of the rejected claims.

With respect to whether Ziegler discloses a door adjacent the opening of the cage, Ziegler is directed to an adjustable door type partition for conveyances and compartments. It is not directed to a cage as that term would be understood by one of ordinary skill in the art. It is clear from the specification and the context of the word in the claims of the instant application, that “cage” means a structure for confining birds or animals, enclosed on at least one side by a grating of wires or bars in order to let in air and light. In fact, the title of the application is “Cage For Transporting and Stunning Livestock.” The Examiner is wrong when she states that a cage can simply be “something that restricts freedom, as a cage restricts movement.” That definition even includes the word “cage,” which is obviously boot-strapping. Ziegler is not directed to a cage and

Applicant : Roger Draft
Appln. No. : 10/785,636
Page : 4

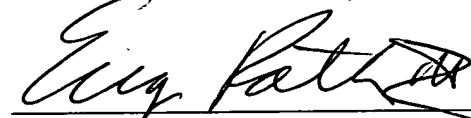
does not disclose such a structure. Therefore, it cannot be anticipatory of the rejected claims of the present application.

Respectfully submitted,

ROGER DRAFT

By: PRICE, HENEVELD, COOPER,
DEWITT & LITTON, LLP

Dated: July 24, 2006



Eugene J. Rath III, Reg. 42 094
695 Kenmoor, S.E.
P.O. Box 2567
Grand Rapids, Michigan 49501
616/949-9610